IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

CRL.A.No. 2188 of 2004(D)

SC.121/1998 of ADDL. SESSIONS COURT (ADHOC), TRIVANDRUM
CP.4/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, NEDUMANGAD
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APPELLANT: APPELLANT

KUMAR, S/O.PONNAYAN, CONVICT NO.8387,
CENTRAL PRISON, TRIVANDRUM 695 012

BY ADV. SMT.SANGEETHA LAKSHMANA

RESPONDENTS: RESPONDENT

STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.2188 OF 2004 (D)

Dated this the 6th day of August, 2007

J U D G M E N T

KOSHY,J.

Appellant/accused was convicted and sentenced for life imprisonment under Section 302 of the Indian Penal Code, for allegedly killing his wife and two children by setting fire to the house where they were staying. On 12.9.1997, according to the prosecution, accused and Prabha quarreled and at about 6 p.m. on the same day and out of his suspicion about her chastity and with the intention of committing her murder, accused poured kerosene on Prabha who was sleeping and also on the hut and kindled fire. Prabha and her two children sustained severe burn injuries. Prabha along with her four year old daughter Shiny died in the fire. Her two year old child Chinchu died on 17.9.1997 at about 1 a.m. while undergoing treatment in S.A.T. Hospital for burn injuries. The hut was burned to ashes.

2. PW1 is first informant. He is the step father of deceased Prabha. PW2 is the mother of Prabha. PW7 is the cousin of Prabha living very near to the place of the occurrence. PW14 is the mother of PW7 and sister of PW2. PW8 is the wife of Kochumany who is also a cousin of Prabha. Before going to the prosecution case, we may consider 313 statement of the accused. A written statement was filed by the accused when he was questioned under Section 313 of Cr.P.C. According to him, he suffered heavy burns on his face and on a part of his left ear lobe. While he was sleeping, he felt burning sensation and he saw deceased Prabha and himself was under fire. He jumped and pushed Prabha outside. He again came inside and brought Chinchu outside. By the time he also got injuries on his face and was unable to see anything. Because of the mental pain and burn injuries, he is only remembering that he came outside the house and sat down. This 313 statement would show that the fire took place at 8 p.m. on that day and at that time he, his wife and his two daughters were only inside the house.

3. Now we will come to the evidence of PW1. PW1 step

father deposed that deceased Prabha was the daughter of his wife born before their marriage. He is staying about 1 km away from the house and in his house, his wife (PW2) and son of Prabha (PW10) are staying. PW10 is the son of Prabha before her alliance with the accused. He stated that he knew about the incident when Kochumany, husband of PW8 Nirmala, informed him that the house has caught fire. Prabha, Shiny, daughter of Prabha died and Chinnu was taken to the hospital. He informed to the Police station at about 10.30 p.m. on the same day. He also stated that there is no legal marriage between deceased and the accused. They were in love and they lived together for about two years at Thengapattanam and four years at Balaramapuram. After six years, she returned to her house stating that accused used to manhandle her and tried to hang her and after four or five days accused also came and stayed there for two months. At that time there were no problems between them. Then a small piece of land which was inherited by his wife from her mother was given to them and hut was also constructed. In that house deceased, accused and their daughters Shiny and Chinju were staying. He also stated that after they started their living, neighbours

told that accused used to beat her in an intoxicated state and create problems. When he received the information regarding the death, he went there after giving information to the Police. The house was completely burn down and Prabha was seen dead outside the house. Inside the house Shiny was lying dead and accused was not there. When he asked Kanakamma PW14, neighbour it was stated that accused ran away. At the time when he gave information to the police, he was not aware of the details as immediately after he got information he gave Ext.P1. Then only he came to the place of incident. When he went there there was a smell of kerosene. He also stated that at the time of PW7 Latha's marriage, accused came there and love affair started with the deceased. He also stated that at the time of inquest he was present there. He also stated that for the work done from Balaramapuram, deceased got Rs.800/- and out of which, Rs.300/- was taken by the accused and balance was also demanded by him. But she refused to give him and he used to tell her that she got the money by way of prostitution. After five days Chinju, daughter of accused died. PW2 is the wife, PW1 (mother of deceased) who rushed there on getting information. She also gave the similar version.

PW14 is Kanakam, neighbour. Even though she was declared hostile, she stated that she is the sister of PW2 and is staying within 60 feet to the house where Prabha was burn. Merely because a witness is declared hostile, his/her evidence need not be discarded and court cannot accept the believable part of the testimony as held by the Apex Court in ***State of U.P v. Ramesh Prasad Misra and another (AIR 1996 SC 2766) and Gurupreet Singh v. State of Haryana (AIR 2002 SC 3217)***. PW14 also stated regarding the past incident. She stated that deceased came from Thengapattanam with a swollen cheek and a broken ear stud. She asked about that and came to know that it was due to beating and she wants to get a divorce. She also deposed that it was usual for the accused to assault and quarrel with the deceased doubting her chastity. She deposed that:

She also stated that on 9.12.1997, at about 8 p.m. she heard a cry calling her for help and kerosene is being poured over her.

At that time she, her daugther PW7 and Manoharan PW11 went there. PW14 was declared hostile only with regard to her 161 Statement that she saw the accused quarrelling with his wife on the same day regarding demanding money. PWs. 7 and 11 saw the fire and she asked her son-in-law Manoharan to bring water and at the time accused poured that water over him as accused was also caught injuries instead of giving that water to save the child who was crying inside the house. PW7 and Shibu took the child to the hospital. By the time she saw body of Prabha lying outside the house and body of Shiny inside the house. She also stated about the disputes between accused and deceased regarding Chastity. PW7, daughter of PW14 also stated that after hearing the cry by her mother, she also went to the place and she repeated the same story and also stated that for saving the child she took the child to the hospital. PW11 Manoharan also corroborated the same version. It is

very sad to note that the accused ran away without helping the crying child of $1^1/_2$ years old who was injured in the fire. Evidence of PW8 who is also the immediate neighbour also corroborated the evidence of PW14 and PW7. It was argued that there was some discrepancies in the 161 statement and deposition of witnesses. Witnesses examined are illiterate village people who gave evidence after seven years of the incident. Even then we are of the opinion that discrepancies pointed out are very minor and in material aspects there is no discrepancy. It was proved that there were quarrel between accused and deceased while staying in the same house and incident occurred at 8 p.m. and the conduct of the accused also shows that even though he got injuries while setting fire to the house after pouring kerosene, he did not try to help the small child coming outside praying for help. Merely because deceased was able to come outside the house while she was burning, a last attempt to save herself, story given by the accused cannot be believed. Time was only 8 p.m. and it is not a time for deep sleep.

The totality of the evidence and circumstances would

show that accused and accused alone is guilty, and only possible hypothesis is that charges as against the accused is proved beyond reasonable doubt. It is argued by the learned Public Prosecutor that considering the conviction finding that of the accused brutally killing of his wife and two children, he deserved capital punishment. We note that State did not file any appeal. In these circumstances, we see no ground to interfere in the conviction and sentence passed by the Sessions Court. Hence appeal is dismissed.

J.B.KOSHY, JUDGE

V.GIRI, JUDGE

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J.B.KOSHY & V.GIRI, JJ.

CRL.A.NO.2188 OF 2004 ()

J U D G M E N T

6th August, 2007